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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,046	10/19/2001	John B. Taylor	396542	1834

7590
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Suite 2800
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04/02/2004

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

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DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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10/04006

TAYLOR

EXAMINER

MSK Levy

ART UNIT	PAPER NUMBER
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1616

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 10/20/03

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-14 is/are pending in the application.

Of the above, claim(s) 3-14 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1, 2 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3-14 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 9 of 10/20/03.

The claims are to methods, not available for examination in the parent, as they were cancelled – proper vehicle for examination would have been a divisional, not a reissue.

Regarding changes to the specification neither amendment of 10/19/01, pre amendment, nor amendment of 10/20/03, was entered, to nor is amendment to the specification entered by current amendment. All of the changes argued for are argued on the basis of typographical transcriptional errors. These are errors correctable by certificate of correction, not of claims to more or less than inventor was entitled to. Further it is unclear what applicant wishes to change Alkynyl to: Alkynyl (amendment) or Alkynyl L (p.7, arguments).

As to method claims; they were in the case, but cancelled by applicant's pre-amendment. The examiner never was able to consider them. They are not properly considered for the first time here.

Finally, reciting the entire paragraph must be done in amendment to the specification.

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Claims 1, 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 has no support for Alkynyl, as amendment to specification was not entered. See 37 CFR 1.121(b)(2)(iii).

Claims 1, 2 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Examiner finds no support for the new language "in vivo-fertilizer".

Claims 1, 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Fenn et al '84.

The rejection of record is maintained. The compositions, regardless of intended use, here and in Fenn, are the same. Applicants arguments that the teaching of Fenn's aqueous mix of salts do not produce the claimed in vivo effects are not persuasive. There could be any number of reasons why the same composition works in the one species or environment, but not other, yet are not accordable 2 patents; one when it works, another when it doesn't.

Claims 1, 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Dolan et al '88).

The rejection of record is maintained. Here, too the compositions are the same.

Art Unit: 1616

Claims 1, 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Griffith et al '93.

The rejection of record is maintained. Here, too the compositions are the same.

Applicant's arguments filed on 10/20/03 have been fully considered but they are not persuasive. Applicant's arguments are not persuasive, as discussed above, except for Aliette, withdrawn. A supplemental oath (see 37 CFR 1.175 (b) (1)) was not submitted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL S. LEVY
PRIMARY EXAMINER

Levy/LR